

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

PAUL GOLDMAN,
Pro se Plaintiff,

v.

Civil No. 3:21-cv-420 (DJN)

RALPH NORTHAM, *et al.*,
Defendants.

ORDER
(Requiring Defendants
to File Further Briefing)

This matter comes before the Court in preparation for the hearing on Defendants' Motion to Dismiss the Second Amended Complaint ("Defs.' 2d Mot. to Dismiss") ECF No. 23)), scheduled for October 12, 2021, at 10 a.m. In Plaintiff's Response to Defendants' Motion to Dismiss the Second Amended Complaint ("Pl.'s Resp." (ECF No. 27)), Plaintiff asserts that

"[a]t all times, the Code of Virginia provided a mechanism for the Governor and the members of the Virginia Board of Elections to seek a formal written [opinion] of the [Virginia] Attorney General as to how such a failure [to redraw legislative districts in time for the 2021 election] might impact their duties to conduct elections as established by the very court decisions now enshrined in the Constitution of Virginia. None of these Defendants took advantage of this provision, which would require the Attorney General of Virginia to formally provide such advice."

(Pl.'s Resp. ¶¶ 146-47.)

Additionally, Plaintiff argues that the Code of Virginia requires the Virginia Attorney General ("the Attorney General") to respond to any such request for a formal written opinion, because the statute states that the Attorney General "shall" render an opinion when requested. (Pl.'s Resp. ¶ 79 (citing Va. Code. § 2.2-505(A) ("The Attorney General *shall* give his advice and render official advisory opinions in writing only when requested in writing so to do by one

of the following: the Governor; a member of the General Assembly; . . . a chairman or secretary of an electoral board; or the head of a state department, division, bureau, institution or board.”.)

In Prospective Plaintiff Joshua Stanfield’s (“Stanfield”) Motion to Intervene and Response to Defendant’s Memorandum in Opposition to his Motion for Joinder (“Stanfield’s Resp.” (ECF No. 30)), Stanfield notes that Delegate Lee J. Carter requested an opinion from the Attorney General on the constitutionality of the 2021 election. (Stanfield’s Resp. at 10.) Defendants have not yet addressed whether the Attorney General received a request for an opinion on this issue from Delegate Carter or any other individual or entity permitted to make such a request. For that reason, the Court hereby ORDERS Defendant to file a pleading addressing the following issues by 11:59 p.m. on October 9, 2021:

- (1) Has any Delegate, state Senator or other individual or entity permitted by Virginia Code § 2.2-505(A) to request a formal written opinion regarding the constitutionality of the 2021 Virginia election from the Attorney General made such a request(s)?
- (2) If the answer to (1) is yes:
 - (a) When and by whom was that/those request(s) made?
 - (b) Did the Attorney General issue an opinion in response to the request(s)? If yes, what was his opinion? If no, why did the Attorney General not issue an opinion when Virginia Code 2.2-505 states that he “shall” issue an opinion when a permitted individual or entity makes such a request?

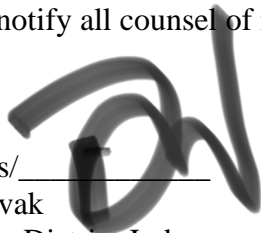
Additionally, in their Motion to Dismiss the First Amended Complaint (“Defs.’ 1st Mot. to Dismiss”) (ECF No. 12)), Defendants challenged Plaintiff’s standing to bring this action (Mem. in Supp. of Defs.’ Mot. to Dismiss (“Defs.’ 1st Mem.”) at 4-8 (ECF No. 13).) Defendants

did not raise a standing challenge in their Motion to Dismiss the Second Amended Complaint (ECF No. 23), and they did not file a reply to Plaintiff's Response to their Motion to Dismiss (ECF No. 27). Thus, in the pleading discussed above, Defendants shall also state whether they believe Plaintiff has standing to bring this action.

Finally, in light of the upcoming hearing on October 12, 2021, and the fact that Plaintiff is proceeding *pro se* and receives all docket entries in this case by mail, the Court hereby ORDERS Defendants to email Plaintiff their response(s) to this Order.

Let the Clerk file a copy of this Order electronically and notify all counsel of record.

It is so ORDERED.


_____/s/_____
David J. Novak
United States District Judge

Richmond, Virginia
Dated: October 8, 2021